IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 311 OF 1988.

The Osmanabad District Central
Co-op. Bank Ltd., Latur. ... Applicant.

V/s.

Commissioner of Incom-tax, Nasik. ... Respondent.

Ms.Asifa Khan i/b. K.B.Bhujle
for the applicant.

Ashok Kotangale for the respondent.

CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.

DATED : 30th June 2005.

P.C. :

. By this reference under section 256 of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this Court:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the assessee's agency activity on account of its agreement with the Apex Bank is not business of banking.

2. Whether the Tribunal was, on the facts and circumstances of the case, right in

holding that the commission derived by the assessee as service charges for collections made on the authority of its agreement with the Apex Bank is not attributable to its banking business and, as such, not entitled to deduction under section 80P(1)?

2. Learned counsel for the parties agreed that the decision of this Court in the case of **C.I.T. v. Ahmednagar Dist.Central Co-op.Bank**, (2003) 264 ITR 48 (Bom) covers both the questions referred to us.

In this judgment this Court has observed as under:

> "..... In the case of Mehsana District Central Co-operative Bank Ltd. v. ITO [2001] 251 ITR 522, the Supreme Court has held that the income derived by the co-operative bank by way of rent from the customer for enjoying safe deposit vault as a facility, would squarely come under section 6(1)(a) of the Banking Regulation Act and that such income derived by the assessee-bank from hiring out safe deposit vaults was income from the business of banking and, therefore, deductible under section 80P(a)(i) of the Income-tax Act....."

On the above observations, this court held as under:

> ".....With globalisation, banking is not restricted to receiving deposits for the purposes of lending. Banks offer various facilities to its customers. They provide lockers, safe deposit vaults, finance for margin trading, collecting dues and charges for and on behalf of the government, local authority, MTNL, BEST, MSEB, etc. Section 6(1)(a) of the Banking Regulation Act is an enabling provision. It provides for various forms of business akin to banking. Therefore, section 6(1) states, inter alia,

> that in addition to the banking business a banking company may engage in specified forms of business enumerated in section 6(1)(a) to (o). We are confining our case to the activity of the bank collecting charges for and on behalf of MSEB, MPCS for commission/fees....."

3. In the above view of the matter and law laid down by this Court, both questions have to be answered in the negative i.e. in favour of the assessee and against the revenue. We answer the above questions accordingly.

4. Reference stands disposed of with no order as to costs.

(A.S.AGUIAR, J.) **(V.C.DAGA, J.)**